IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4891 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAGANBHAI BHAGABHAI CHAUHAN

Versus

BANK OF INDIA

Appearance:

1. Special Civil Application No. 4891 of 2001

MR SHALIN N MEHTA for Petitioner No. 1-25

MR.PRASHAN A. MEHTA FOR MESSRS NANAVATI ASSOCIATES for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.S.GARG

Date of decision: 15/04/2005

ORAL JUDGEMENT

Heard the learned counsel for the parties. The

petitioners, 25 in number, are before this Court challenging order dated 15.12.2000 issued by the respondent-Bank of India, Surat Main Branch (sample order-Annexure 'A') whereunder the petitioners' application for voluntary retirement from the services of the Bank in response to the Branch Circular No.94/ 132/ Personnel 2000-2001/ 19 dated 1st November 2000 was accepted by the Bank and voluntary retirement was allowed in favour of the petitioners. The submissions of the petitioners are that a perusal of the unamended scheme would show that every person who had not completed 20 years was to get the benefit of five years of service for the purposes of pension, but by the amendment dated 13.12.2000 that benefit was sought to be withdrawn and the fact was not made known to any of the petitioners giving them sufficient time to go over the subject afresh and consider the desirability of withdrawal of the resignation. The submission of the learned counsel for the petitioners is that one side the respondent Bank was taking the voluntary resignation to be irrevocable and at the same time was changing the terms and conditions of the scheme adverse and detrimental to the interest of the employees. Placing reliance upon the judgement of the Supreme Court in the matter of Bank of India and others Vs. O.P. Swarnakar and others, reported in (2003) 2 SCC 721 it is submitted that in case any amendment to the detriment of the person opting for the scheme is made then such person would be entitled to withdraw the resignation. The submission in the alternative is that if in light of the said judgement of Bank of India (supra) the scheme and amendment introduced later on are held to be valid, then the petitioners are entitled to an opportunity of withdrawal of their resignation in view of the fact that the amendment was made on 13.12.2000 and the petitioners were retired with effect from 15.12.2000. It is also submitted that in case of the petitioners who are not given proper opportunity of reconsidering the whole issue, the scheme as it originally was should be applied and five year benefit should be given to the petitioners.

2. Contending contrary to the afore referred submissions learned counsel for the respondent Bank submitted that the Supreme Court in the said matter of Bank of India (supra) has observed that the scheme, so also the amendment are valid. According to him a person is entitled to withdraw his resignation but according to him resignation should be withdrawn right in time. His further submission is that if amendment is valid, then the benefit of five years services cannot be extended in favour of the petitioners. The scheme would be

applicable to all employees with all amendments made to it. For withdrawal of the resignations it is submitted that in a given case right to withdraw the resignation may be given but in the present case withdrawal is not permissible and in any case the petitioners have accepted the benefits flowing from the retirement scheme. Learned counsel for the petitioners counterblasting the said arguments submitted that the petitioners were obliged to accept letters accepting their voluntary retirement because they had no other option and from Annexure 'A', it would clearly appear that these voluntary retirement orders were accepted by the petitioners under protest. His submission is that an employee cannot force himself upon an employer, nor he would be required to go to gates or doors of the employer everyday and raise his protest saying that he has been illegally removed.

3. True it is, that an amendment detrimental to the interest of the employees was made. The Supreme Court in the matter of Bank of India (supra) observed that the scheme which underwent a change was in fact a valid scheme. The Supreme Court considering the circumstances observed that the original scheme as floated was valid and after its amendment continued to be valid. The Supreme Court further observed that if a particular right flowing from the scheme in favour of the employees was sought to be withdrawn, then such employee would be entitled to withdraw the application seeking voluntary retirement. In the present case the original order was issued on 15.11.2000 and it was made effective from 15.12.2000 itself. True it is that the benefits flowing from the scheme were accepted by the petitioners and others under protest, but the fact remains that they were removed from services in a valid scheme. It is also to be noted that the orders were issued on 15.12.2000 and could be served upon one Chhaganbhai Bhagabhai Chauhan on 17.01.2001. We do not know when these orders were served upon other petitioners and what was their reaction to these orders. Be that as it may, the fact remains that the benefits have already been accepted by the petitioners.

4. So far as giving of five year benefit or additional five years services for the purpose of pension is concerned though the argument made by learned counsel for the petitioners is lucrative but it would create a legal fallacy.

4. If the scheme as originally floated was valid and if there were no amendments then such benefit could be extended in favour of the persons opting for voluntary

retirement but in case the scheme before its application to the interest of the petitioners is amended, then the amended scheme will have to be applied to them. If the petitioners only are given the benefit of five years extra services then it is likely to create legal complications because by this judgement this Court would apply unamended scheme to the petitioners while in fact the scheme stands amended and the said amendment was held to be valid by the Supreme Court.

5. True it is that the petitioners lost their right of withdrawing the letter of voluntary retirement, but by such lapse of time and change in law no relief can be given to the petitioners. The petition is dismissed. Rule is discharged. No order as to costs.

(R.S. Garg, J.)

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